

From: [LaBombard, Will](#)
To: [Moore, Gary](#)
Subject: RE: FJ Doyle Salvage TDD - travel issue
Date: Wednesday, February 20, 2019 4:39:51 PM

Hi Gary,

I apologize for not discussing this with you first. I had your emailed points and the points that Weston made during our monthly meeting; I assumed I had all of the relevant information to begin my research and come to an objective recommendation based on the contract, the FAR, and the FTR. Next time I'll circle back with you before I begin researching to make sure we're on the same page.

Contract clause C.1(2)(b):

(b) For any employee, routine daily commuting time (less than 50 miles one-way) to and from the work site is not an allowable charge under the contract. The Contractor agrees to make every effort to utilize employees from the nearest possible location. Travel expenses are allowable for each employee required on-site if the work site is in excess of fifty (50) miles one way from the individual's place of employment or residence, whichever is less, and total work day (including travel time) exceeds 12 hours per day. The "50 miles in 12 hours" is the current stipulation for travel costs and may be superseded by later editions of the FAR and/or FTRs. The "50 miles in 12 hours" shall not be exceeded without the approval of the CO. The regulations in effect at any given time govern travel costs under this contract. When an employee is required to travel in excess of fifty (50) miles one way from his/her residence or place of employment (whichever is less) to a site and return, such travel is considered work time for which reimbursement by the Government should be made at appropriate straight time rates. Reimbursement for travel time shall not be made by EPA if the contractor's employee(s) is/are not paid for travel time. Miles shall be measured in radial miles or actual miles as determined by the contracting officer.

[FAR 31.205-46](#)

Will LaBombard
214-665-7199

From: Moore, Gary
Sent: Tuesday, February 19, 2019 3:52 PM
To: LaBombard, Will <LaBombard.Will@epa.gov>
Subject: Re: FJ Doyle Salvage TDD - travel issue

Will

Can you send me a copy of that clause. It makes me mad that no one discusses this with me before a decision is made.

Gary Moore

Sent from my iPhone

On Feb 19, 2019, at 2:28 PM, LaBombard, Will <LaBombard.Will@epa.gov> wrote:

Hi Gary,

Just a heads up that the CO has resolved the travel issue for the FJ Doyle Salvage TDD. Please let me know if you have any questions. Thanks!

Will LaBombard
214-665-7199

From: Delaney, Brian

Sent: Tuesday, February 19, 2019 1:52 PM

To: LaBombard, Will <LaBombard.Will@epa.gov>; c.shappee@westonsolutions.com

Cc: Delaney, Brian <Delaney.Brian@epa.gov>

Subject: RE: FJ Doyle Salvage TDD - travel issue

To All and for clarification,

I concur that the contractor be allowed to charge travel time from the Weston office to the site IAW with contract clause C.1(2)(b), the FTR, and FAR 31.205-46, but not be allowed to charge travel time from the employees' residences to the Weston office IAW FAR 31.205-6(m)(2)."

Brian K. Delaney
Contracting Officer

Environmental Protection Agency
1445 Ross Avenue Suite 1200
Dallas Texas 75202
Office Phone 214-665-7473
Email: Delaney.Brian@epa.gov

From: LaBombard, Will

Sent: Tuesday, February 19, 2019 11:02 AM

To: Delaney, Brian <Delaney.Brian@epa.gov>

Subject: FJ Doyle Salvage TDD - travel issue

Hi Brian,

When you get a chance, we could use the CO's official determination on this situation. Reference TDD # EP-S5-17-02/0001/17-004 which has a POP start date of 8/9/2017. I

apologize in advance for the lengthy email, but I want to give you all of my thoughts on the matter up front.

Per Gary's email below, the F.J. Doyle site in Leonard, TX is within 50 miles of Weston's Dallas office (primary mobilization location per the contract). Gary is making the point that getting to the site is routine "local transportation" of less than 50 miles. Therefore, IAW contract clause H-42, the contractor cannot begin charging time until they arrive at the F.J. Doyle site.

Weston has made the point that site personnel must travel from their residences to the Weston office in order to pick up the truck that they use for travel back and forth to the site (because the use of POVs and charging for mileage was not authorized), and that the sum of the distance to their office plus the distance from the office to the site exceeds 50 miles; therefore, the contractor contends that this constitutes travel per contract C.1(2)(b) and the FTR, and that contract clause H-42 does not apply.

The intent or spirit of the language in contract clause C.1(2)(b) appears to state that if a contractor is required to travel a distance greater than 50 miles for business ordered by the EPA, then the contractor should charge that time as travel. If the distance travelled is less than 50 miles, then the contractor should not charge the time as travel. The clause says in part, "For any employee, routine daily commuting time (less than 50 miles one-way) to and from the work site is not an allowable charge under the contract..." and "Travel expenses are allowable for each employee required on-site if the work site is in excess of fifty (50) miles one way from the individual's place of employment or residence, whichever is less...."

On the one hand, the employee language appears to contemplate the distance required for the individual employee's total commute, not necessarily just the distance from their office to the site. This is consistent with the contractor's argument because the total commute distance is greater than 50 miles. On the other hand, the use of "place of employment or residence, whichever is less" appears to apply the clause to just the shorter portion of the commute rather than its entirety. This is consistent with Gary's argument because the distance from the Weston office to the site is less than 50 miles, so it doesn't matter if the employee's total commute (with or without a stop at their office) is greater than 50 miles.

The confounding factor here is the required use of the truck which is kept at the Weston office overnight for security. If the EPA requires the use of a truck and that the truck be stored at a secure location (specifically not an employee's residence), then in this case, the EPA is requiring a commute greater than 50 miles; applying the whichever is less language does not appear to be in the spirit of the contract clause. Therefore, it is my recommendation that the contractor be allowed to charge travel time from the Weston office to the site IAW with contract clause C.1(2)(b), the FTR, and FAR 31.205-46, but not be allowed to charge travel time from the employees' residences to the Weston office IAW FAR 31.205-6(m)(2).

There are three additional considerations:

1. The FTR speaks of “duty stations” when determining cost allowability. Weston utilized three employees rotating daily through the response period, so I am unsure if these individuals meet the requirements of having the F.J. Doyle site as their duty station, or if their duty station remained their Dallas office. FTR is not my forte, so this may not be a relevant factor after other things considered.
2. The contractor also believes that it is most appropriate that they begin charging time as soon as they begin transporting equipment to the site regardless of distance, which they argue includes the rental truck. I haven’t found any language to this effect in the contract, so I don’t understand this point; but maybe I just missed said language, or maybe it’s from the FTR.
3. The contractor has also informed me that throughout the TDD POP, the field personnel have regularly conducted some amount of work during the commute to/from the site because the time was being charged to the site anyway (internal meetings via phone, report preparation, etc.).
4. As noted above, this TDD began in 2017. If you determine that the contractor’s travel is actually local transportation IAW contract clause H-42, would this determination apply retroactively to the beginning of the TDD? Or only going forward from the date of your determination? Note that field work is nearly complete, so this is really more a question of whether you would intend to ask the contractor for a credit if the time should not have been charged as travel.

If you have any questions or need any additional details, please let me know. Thanks!

Will LaBombard
214-665-7199

From: Moore, Gary
Sent: Sunday, February 17, 2019 4:12 PM
To: LaBombard, Will <LaBombard.Will@epa.gov>
Subject: FJ Doyle Salvage - Weston Solutions

Will,

It appears that Weston is charging me travel time to/from the FJ Doyle Salvage Site. The site is less than 50 miles and therefore they are not allowed to charge for travel to and from the site (commute). I will allow them to charge the travel time if they are transporting samples or are required to pick-up equipment (except for the rental truck they are using to commute to/from the site). I am not allowing anyone that is within 50 miles of the site to charge travel time to/from the site.

For example, I live 41.5 miles from the site and I do not get to charge my travel time to/from the site. Also, I have to drive from my house to the Fairview Fire Station to pickup the EPA truck and then commute to/from the fire station to the site which is

37.8 miles.

For Weston, it is 46.2 miles from their office to site based upon MapQuest.

I need a response back from you confirming that you guys are not going to allow them to charge their commute time to/from the site as this is against the travel rules.

Thanks,

Gary W. Moore (6SF-ER)
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